



# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 09/25/01

AGENDA ITEM 4

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Finance and Internal Services Director

**SUBJECT:** Authorization for Issuance and Sale of Certificates of Participation for Financing Certain Water Improvement Projects and Appointment of Financial Advisor and Bond Counsel

### **RECOMMENDATION:**

It is recommended that the City Council and the Board of the Hayward Public Financing Authority adopt the attached Resolutions authorizing the issuance and sale of Certificates of Participation for financing certain Water Improvement Projects and the appointment of a Financial Advisor and Bond Counsel.

### **BACKGROUND:**

The City's Water System Capital Improvement Fund has three projects in the adopted Five-Year Capital Improvement Program, (CIP) which staff is recommending for long-term financing. The projects are the Transmission Main, Walpert Pump Station to Highland 500 Tank, South Walpert Reservoir Pump Station, and Hesperian Booster Pump Station. The total cost of these projects is \$9.4 million. The budget contemplates that only about half of this amount or a net funding of \$4.5 million is required. Taking into consideration costs of issuance and reserves the total borrowing is estimated at approximately \$5.2 million. Staff is recommending that the projects be financed over a 10 to 25-year period using Certificates of Participation. A 10 to 25 year repayment period is recommended to take advantage of the ability to retire a portion of the debt earlier thereby lowering overall interest costs. Since the projects are "public use" projects, they qualify for "tax-exempt" financing meaning that the City will benefit from reduced interest rates.

It should be noted that \$4.5 million is the net funding required. The size of the debt issue is estimated at \$5.2 million. The difference between the net proceeds of \$4.5 million and the overall debt issue of \$5.2 million is due to several factors. The overall issue provides for "costs of issuance" of approximately \$225,000, (which includes underwriters' discount, printing, legal and financial advisor fees and insurance) and reserve funds of approximately \$500,000. As noted above, the borrowing is structured such that a portion of the debt is retired in 10 years and the balance in 25 years. This repayment schedule is designed to retire the loans as soon as possible and hence reduce overall interest costs. The overall interest rate is estimated at 5.3%.

With respect to the issuance of debt by the Water Fund, the most advantageous approach is for the City to issue debt through the Hayward Public Financing Authority (HPFA) using

Certificates of Participation. The HPFA is a Joint Exercise Powers Authority (JPA) formed by the City in 1989 to facilitate the financing of capital projects and has been used for several previous issues, including the refunding of the 1989 water system revenue bonds. The repayment of debt is ultimately secured by the Water Enterprise Fund, which enables the HPFA to issue a competitive debt instrument. The issue of new debt will be accomplished through a competitive bid process.

In order for staff to proceed with the COP financing, it is necessary for the City Council and the Board of the Hayward Public Financing Authority, to take certain actions. Specifically, Council must adopt a resolution authorizing the issue of debt, approving the form of the documents, authorizing the issue of an Official Statement, and authorizing staff to take such steps as are necessary to complete the financing.

In addition to seeking authorization to proceed with the COP financing, staff is requesting that the City Council authorize execution of contracts with the firms of Kelling, Northcross, & Nobriga for financial advisory services and Jones Hall for bond counsel services. Kelling, Northcross & Nobriga currently serve as the City's financial advisor and were selected through an earlier competitive bid process. Jones Hall has provided the City with excellent bond counsel service in the past and is highly experienced and knowledgeable in this specialized area.

In terms of fees for services, the contract for financial advisory services will be for an amount not to exceed \$30,000. The fee for bond counsel service will be determined from a schedule based on the final amount of the debt issue, but it is estimated that the bond counsel's fee will not exceed \$30,000. Staff has reviewed the fees submitted for both Financial Advisor and Bond Counsel and finds them to be acceptable. The Financial Advisor and Counsel fees are contingent upon the sale of the Certificates of Participation and will be paid from the proceeds of borrowing.

If authorization to proceed is granted, staff estimates that the award of the financing to the successful bidder will take place in approximately 60 to 90 days.

A preliminary Official Statement and all other legal documents required for the financing are on file with the City Clerk.

Recommended by:

Perry H. Carter  
Perry H. Carter, Finance & Internal Services Director

Approved by:

Jesús Armas  
Jesús Armas, City Manager

**DRAFT**

CITY OF HAYWARD

Resolution No. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

**RESOLUTION OF THE CITY OF HAYWARD  
AUTHORIZING THE ISSUANCE AND SALE OF NOT TO  
EXCEED \$5,700,000 CERTIFICATES OF PARTICIPATION,  
AUTHORIZING AND DIRECTING EXECUTION OF  
RELATED INSTALLMENT SALE AGREEMENT AND  
TRUST AGREEMENT, APPROVING PRELIMINARY  
OFFICIAL STATEMENT WITH RESPECT THERETO, AND  
AUTHORIZING OFFICIAL ACTIONS**

WHEREAS, the City of Hayward (the "City") presently owns certain municipal Water system facilities (the "Water System"); and

WHEREAS, the City wishes to finance improvements to the Water System, consisting generally of improvements to the Walpert Reservoir, construction of a new transmission line from the Walpert Pump Station, and the construction of the Hesperian Booster Pump Station (the "Improvements"), more particularly described in the Installment Sale Agreement; and

WHEREAS, the Authority proposes to sell the Improvements to the City pursuant to an Installment Sale Agreement, dated as of November 1, 2001, by and between the Authority and the City (the "Installment Sale Agreement"), and to assign its right to receive installment payments (the "Installment Payments") under the Installment Sale Agreement to a trustee to be selected by the Finance Director, as trustee (the "Trustee"), pursuant to that certain Assignment Agreement, dated as of November 1, 2001, by and between the Authority and the Trustee; and

WHEREAS, the City wishes to secure said Installment Payments with a pledge of Net Revenues (as defined in the Installment Sale Agreement) of the Water System; and

WHEREAS, it is in the public interest and for the public benefit that the City authorize and direct execution of the Installment Sale Agreement and certain other financing documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the City and the members of the City Council, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the City Council of the City of Hayward as follows:

Section 1. Execution and Delivery of Certificates. Certificates of Participation (2001 Water System Improvement Project) (the "Certificates") are hereby authorized to be executed and delivered pursuant to the provisions of the Trust Agreement, as hereinafter defined. To that end, the below-enumerated documents be and are hereby approved, and the Mayor, the City Manager and the Finance Director are hereby separately authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, and the City Clerk is hereby authorized and directed to attest to such official's signature:

(a) an installment sale agreement relating to the Water System, by and between the Authority, as seller, and the City, as purchaser (the "Installment Sale Agreement"); and

(b) a trust agreement, by and among the Authority, the City and the Trustee (the "Trust Agreement"), relating to the financing and the execution and delivery of the Certificates.

Section 2. Sale of Certificates. The Council hereby approves the sale of the Certificates by negotiation with a firm to be selected through a competitive process conducted by Kelling, Northcross & Nobriga, the City's hereinafter appointed financial advisor (the "Financial Advisor"), and authorizes the execution of the Purchase Contract (the "Purchase Contract"), by and between the City and the firm so selected (the "Underwriter"), in substantially the form on file with the City Clerk, together with any changes therein or additions thereto approved by the Finance Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Purchase Contract shall be executed in the name and on behalf of the City by the Finance Director, who is hereby authorized and directed to execute and deliver said form of Purchase Contract on behalf of the City upon submission of a proposal by the Underwriter to purchase the Certificates, which proposal is acceptable to the Finance Director. The principal amount of the Certificates shall not exceed \$5,700,000, the purchase price received by the City for the Certificates from the Underwriter, exclusive of original issue discount paid to the investors, shall be not less than ninety-eight and one-half percent (98.5%) of the par amount thereof, and the true interest cost on the Certificates shall not exceed six percent (6%).

Section 3. Official Statement. The City hereby approves, and hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates, in the form on file with the Finance Director. The Underwriter is hereby authorized to distribute the Official Statement in connection with the sale of the Certificates. The Finance Director is hereby authorized and directed to (a) execute and deliver to the purchaser of the Certificates a certificate deeming the preliminary Official Statement to be nearly final as of its date, (b) approve any changes in or

additions to cause such Preliminary Official Statement to be put in final form, and (c) execute said final Official Statement for and in the name and on behalf of the City.

Section 4. Appointment of Bond Counsel; Financial Advisor. Jones Hall, a Professional Law Corporation, is hereby appointed bond counsel in connection with the Certificates, and the Finance Director is hereby authorized to execute an agreement for legal services with Jones Hall, relating to the Certificates, in substantially the form presented at this meeting and on file with the Finance Director. Kelling, Northcross & Nobriga is hereby appointed as financial advisor to the City in connection with the sale of the Certificates, and the Finance Director is hereby authorized to execute an agreement for financial advisory services with Kelling, Northcross & Nobriga, in substantially the form on file with the Finance Director.

Section 5. Official Actions. The Mayor, the City Manager, the Assistant City Manager, the Finance Director, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents (including specifically an escrow deposit and trust agreement), which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

Section 6. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**DRAFT**

Hayward Public Financing Authority 

RESOLUTION NO. HPFA-\_\_\_\_

INTRODUCED BY DIRECTOR

RESOLUTION PROVIDING FOR: APPROVING,  
AUTHORIZING AND DIRECTING EXECUTION OF  
CERTAIN INSTALLMENT SALE FINANCING  
DOCUMENTS AND AUTHORIZING AND DIRECTING  
CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, the City of Hayward (the "City") presently owns certain municipal Water system facilities (the "Water System"); and

WHEREAS, the Authority wishes to assist the City by participating in the financing of the costs of construction of certain improvements to the Water System, consisting generally of improvements to the Walpert Reservoir, construction of a new transmission line from the Walpert Pump Station, and the construction of the Hesperian Booster Pump Station (the "Improvements"), more particularly described in the Installment Sale Agreement; and

WHEREAS, the Authority proposes to sell the Improvements to the City pursuant to an Installment Sale Agreement, dated as of November 1, 2001, by and between the Authority and the City (the "Installment Sale Agreement"), and to assign its right to receive installment payments (the "Installment Payments") under the Installment Sale Agreement to a trustee to be selected by the Finance Director, as trustee (the "Trustee"), pursuant to that certain Assignment Agreement, dated as of November 1, 2001, by and between the Authority and the Trustee; and

WHEREAS, the City wishes to secure said Installment Payments with a pledge of Net Revenues (as defined in the Installment Sale Agreement) of the Water System; and

WHEREAS, pursuant to that certain Trust Agreement, dated as of November 1, 2001, by and among the City, the Authority and the Trustee, the Trustee will execute and deliver not-to-exceed \$5,700,000 principal amount of certificates of participation evidencing direct, undivided fractional interests in the Installment Payments (the "Certificates"); and

WHEREAS, the documents below specified have been filed with the Authority, and the members of the Authority, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, the Board of Directors of the Hayward Public Financing Authority hereby finds, determines, declares and resolves as follows:

Section 1. The below-enumerated documents be and are hereby approved, and the Chairperson, Vice Chairperson, Treasurer and Executive Director are hereby separately authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, and the Secretary of the Authority is hereby authorized and directed to attest to such official's signature:

(a) an installment sale agreement, relating to the Improvements, between the Authority, as seller, and the City, as purchaser (the "Installment Sale Agreement");

(b) a trust agreement, by and among the Authority, the City and the Trustee (the "Trustee"), relating to the financing and the execution and delivery of certificates of participation in installment payments to be made by the City under the Installment Sale Agreement; and

(c) an assignment agreement, by and between the Authority and the Trustee, pursuant to which the Authority will assign certain of its rights under the Installment Sale Agreement, including its right to receive installment payments thereunder, to the Trustee.

Section 2. The Chairperson, Vice Chairperson, Treasurer, Executive Director, Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the installment sale financing herein authorized.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
Secretary  
Hayward Public Financing Authority

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel  
Hayward Public Financing Authority